

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET N.W., 6TH FLOOR
WASHINGTON, D.C. 20006

March 27, 1995

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. WEST 91-233
 :
v. :
 :
BRIDGER COAL COMPANY :

ORDER DISMISSING PETITION

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq. (1988). On December 29, 1994, the Commission granted the Secretary of Labor's petition for discretionary review of the decision of Administrative Law Judge August F. Cetti, in which he vacated a citation issued to Bridger Coal Company ("Bridger"). 16 FMSHRC 2310 (November 1994).

On February 24, 1995, the Secretary filed a motion for voluntary dismissal of the petition pursuant to Fed. R. Civ. P. 41 (a) and Fed. R. App. P. 42 (b), stating that the motion was made "in an effort to effectively utilize his resources."¹ Mot. at 1. The Secretary asserts that counsel for Bridger had been notified of the motion. The Commission has administratively determined that Bridger does not oppose the motion.

¹ Fed. R. App. P. 42 (b) provides in part: "An Appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court."
Commission Procedural Rule 1 (b) provides that the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure shall apply "so far as practicable" in the absence of applicable Commission rules. 29 C.F.R. ' 2700.1(b).

Upon consideration of the Secretary's motion, we dismiss his petition for review. *See generally RBK Construction, Inc.*, 15 FMSHRC 2099, 2101 n.2 (October 1993).

Mary Lu Jordan, Chairman

Joyce A Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner